

Whether claimant suffered an injury arising out of and in the course of his employment on June 17, 1993, while employed by Bender's, which entitles claimant to an award under the Kansas Workers Compensation Act.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record in the file and based upon the evidence presented and for purposes of preliminary hearing, the Appeals Board finds:

(1) Claimant has failed to prove by a preponderance of credible evidence that he suffered a permanent injury on June 17, 1993, for which he is entitled to any award.

Claimant, a bartender for the respondent, alleges an injury to his back on June 17, 1993, while lifting a keg of beer. While there is supportive evidence in the file to indicate that claimant experienced some type of onset of pain on the date alleged, the information in the file is insufficient to prove any type of permanency resulted from this situation.

Medical evidence in the file indicates claimant has had back problems for many years, by some accounts for as many as thirty years. The incident in question caused claimant to miss no time from work and caused him to seek no medical care during the time Bender's remained in operation through mid-August 1993. After the respondent's business sold, claimant continued to perform his same work duties for the new employer until December 1993 at which time, for unrelated reasons, claimant's employment was terminated. Evidence further supports the fact that the claimant experienced some kind of sudden onset of pain at home while getting out of a chair. It was this incident, in December 1993 at home, that precipitated claimant's attempt to obtain medical treatment for his back.

"In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends." K.S.A. 44-501(a).

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record." K.S.A. 44-508(g).

The burden of proof is upon the claimant to establish his right to an award for compensation by proving all the various conditions on which his right to a recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Whether an accident arises out of and in the course of a worker's employment depends upon the facts peculiar to the particular case. Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556 (1984).

Claimant's contention that he suffered some type of permanent injury necessitating medical care from the June 17, 1993 incident, is not supported by the credible evidence in the record. Claimant's ability to continue his normal labors through his termination of employment in December 1993, coupled with the lack of need for medical attention through December 1993, indicates the incident on June 17, 1993, was nothing more than a temporary increase of claimant's long-term back symptomatology. The Appeals Board finds that it is more probably true than not true that claimant's back problems stem from his incident at home while rising from his chair.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the June 13, 1994, Order of Administrative Law Judge George R. Robertson is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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